

**Zoning Board of Appeals
Minutes of Meeting 2/20/2020
Oak Bluffs Council on Aging Building**

Members present: Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter
Members absent:

Chairman Rogers opened the meeting at 6:00 pm.

***Minutes** from January – Approved unanimously

***Next Meeting Date:** March 19, 2020 at 6 pm (*Peter Yoars will not be present*)

RE: Henson Project

William and Mary Henson

247 East Chop Drive, **Map 2 Parcel 1.1**

*On February 20, 2020 at 6:05 pm, Chairman A. Rogers continued from January 16, 2020, a duly posted public hearing on the application of Map 2 Parcel 1.1 seeking:

a Special Permit with Zoning Bylaws 3.5.5, 9.1.A, 8.1.5 or any action related thereto, to allow renovations and construction of a deck addition and enclosed stairway on a pre-existing, nonconforming on a nonconforming lot located in Residential Zone 2, the VE Zone of the Flood Plain and the Shore Zone of the Coastal District.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Applicants William and Mary Henson were present along with Chris Alley. The existing (11783 sf) lot located in Residential Zone 3 is nonconforming. The lot is located partially within the Coastal District-Shore Zone and the VE Zone of the Flood Plain. The single-family dwelling is located outside the Coastal/Shore Zone and the VE Zone/FPOD. The side setbacks are nonconforming (10.4 ft)

The proposal is to enclose an existing exterior stairwell, add a deck and then add a 2nd story deck on the east side. The first floor deck is 2 steps off the ground with a patio over it. The second story deck will be 8 feet. They have reduced the size of the first floor deck and added a walkway. The project has been approved by ConCom. Discussion followed about how enclosing stairs means you're creating a structure. However, this exterior stairway is the only access between first and second floors and so needs to be covered.

Chairman Rogers opened the floor to public comment, there was none. There was also no written correspondence. Chairman Rogers closed the floor to public comment and the board made the following findings and decision:

Member Llewelyn Rogers made a finding that the existing 11783 sf. lot located in Residential Zone 2 is nonconforming. (Req.: 20,000 sq. ft.)

Member Rogers made a finding that the existing lot is located partially within the Coastal District–Shore Zone and the VE Zone of the Flood Plain.

Member Rogers made a finding that the existing SFD is located outside the Coastal/Shore Zone and the VE Zone/FPOD.

Member Rogers made a finding that the existing SFD is a nonconforming with side (10.4 ft.) setbacks. (Req.: 25/20/20).

Member Rogers made a finding that the proposed construction: stairway and landing enclosure (56 sf.) and deck addition (250 sf.) to a single family dwelling is nonconforming with side (10.5 ft.) setbacks. (Req.: 20 ft.)

Member Rogers made the finding that the proposed addition is not substantially more detrimental to the neighborhood and does not overburden the lot. The board agreed unanimously.

Member Rogers made a motion to approve a Special Permit and proposal to enclose stairway and landing and add a deck and of 250 sf and landing of 56 sf with the condition that it not be made any more nonconforming than the 10.7 setback and Member Yoars seconded it. The board voted 5-0 to approve the Special Permit.

RE: Hopeman and Starks Project

Albert A. Hopeman and Cynthia Starks
8 Wood Duck Way, **Map 48 Parcel 25**

*On February 20, 2020 at 6:25 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 48 Parcel 25 seeking:

***a Special Permit within Zoning By-Laws 4.4.2, or any action related thereto,
to allow the construction of a nonconforming garage
on a pre-existing nonconforming lot located in Residential Zone 3.***

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Applicant Cynthia Stark and applicant representatives Ray Bilodeau and Chuck Sullivan were also present. The existing 30492 sq. ft. lot is located in Residential Zone 3 is nonconforming (Req. 60,000 sq. ft.). The single family dwelling is conforming with all setbacks (Req.: 50 ft. F/S/R). The proposed garage is nonconforming with front setbacks of 8 ft. (req. 50 ft).

Applicant is seeking a special permit because it is impossible to put structure 50 ft. back due to septic system. Property is located in Sengekontacket – all lots are pre-existing, nonconforming. Mr. Sullivan said that in 2010 a neighbor was granted a permit to build a similar garage that is 10 ft. from property line. Project plans have been approved by the Sengekontacket Association and Chairman Rogers read a letter into the record.

Chair Rogers opened floor to public comment. There was none. There was no additional written correspondence. Chair Rogers closed the public comment.

Member Llewellyn Rogers said for the record that their request to allow 8 feet means that next time neighbors will come in front of them looking for six feet then then next one will come and say they want four feet. In his opinion, it is supposed to be 50 ft an he can see it being 10 ft. He asked if applicant could give back 2 more feet so it's in line with the other building. Applicant conceded they could. The board made the following findings and conditions:

Member Holter made the finding that the existing 30492 sq. ft. lot located in Residential Zone 3 is nonconforming. (Requirement: 60, 000 sq. ft.)

Member Holter made the finding that the existing SFD is conforming with all setbacks and height. (Req.: 50 ft. F/S/R)

Member Holter made the finding that the proposed garage (500 sf) is nonconforming with front setbacks. (req.: 50 feet)

The proposed garage with modifications will be 10 feet from the street.

Member Holter made a motion to approve the Special Permit within zoning bylaw 4.4.2 to allow the construction of a nonconforming garage in a pre-existing nonconforming lot in Residential Zone 3 especially considering the modification to move it back 10 feet from the street line and in light of the approval of the Sengekontacket Association. Member Llewellyn Rogers seconded. The board voted 5-0 to approve the Special Permit.

RE: Kriegstein Project

Henry J. Kriegstein, Joan B. Kriegstein, Kriegstein Realty Trust
20 Hubbard Lane, **Map 22 Parcel 11.1**

*On February 20, 2020 at 6:45 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 22 Parcel 11.1 seeking:

a Variance and Special Permit with Zoning Bylaws 4.1.3, 9.1.A or any action related thereto, to allow the construction of a nonconforming addition to a single family dwelling located on a lot in Residential Zone 3 and Coastal District.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Memo received from applicant's attorney requesting the hearing be continued to the May 21st meeting date.

The board and applicant agreed to continue the hearing to May 21, 2020 at 6:30 pm.

RE: Countryman Project

Sherry Countryman

285 Barnes Road, **Map 27 Parcel 1.1**

*On February 20, 2020 at 6:50 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 27 Parcel 21.1 seeking:

a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the construction of an addition and deck to a single family dwelling on a pre-existing nonconforming lot located in Residential Zone 3, the Coastal District-Inland Zone and Island Roads District.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Applicant representatives Chris Alley and John McKeown were also present. The existing 38000 sq. ft. lot is located in Residential Zone 3 and is nonconforming. (Req.: 60,000 sq. ft.) near the lagoon. The existing lot is located within the Coastal District-Shore Zone/Inland Zone and partially the VE Zone of the Flood Plain and the Island Roads District. The existing single-family dwelling is located outside the Coastal/Shore Zone and the VE Zone/FPOD. The SFD is located within the Coastal/Inland Zone and Island Roads District. The SFD is nonconforming with side (23 ft.) setbacks. (Req.: 50/50/50). The proposed construction includes a first floor addition of 120 sq. ft., a deck addition of 580 sq. ft. to a single family dwelling is nonconforming with side (15,19 ft.) setbacks. (Req.: 50 ft.)

The project is a renovation of the house within the same footprint. There are a lot of quirks to the house, a walk-out on the pond side. Dwelling is cut into the hill so that from the road, it appears to be a one-story structure but it's two. Although not sure of the height, there will be no increase in the height. Elevation is approximately 30 feet. The grade is approximately of an elevation of 34 and the ridge is about 55. It has gone through ConCom. The septic was upgraded to an advanced treatment system. The proposed project cannot meet the side yard setback requirements.

Chair Rogers opened floor to public comment. There was none. There was no written correspondence.

Member Rogers said they are asking to take a nonconforming and make it more nonconforming.

Much discussion back and forth about whether to make modifications to plans and continue the hearing to March or whether they should reduce the deck back five feet to the back side of the door. Decided they would reduce deck size. The board made the following findings and decision:

Member Peter Yoars made the finding that the existing 38000 sf. lot located in Residential Zone 3 is nonconforming. (Req.: 60,000 sq. ft.)

Member Yoars made the finding that the existing lot is located within the Coastal District–Shore Zone/Inland Zone and partially the VE Zone of the Flood Plain and the Island Roads District.

Member Yoars made the finding that the existing SFD is located outside the Coastal/Shore Zone and the VE Zone/FPOD.

Member Yoars made the finding that the existing SFD is located within the Coastal/Inland Zone and Island Roads District.

Member Yoars made the finding that the existing SFD is a nonconforming with side (23 ft.) setbacks. (Req.: 50/50/50).

Member Yoars made the finding that the proposed construction: first floor addition (120 sf.) and deck addition (550 sf – a change from the proposed 580 sf.) to a single family dwelling is nonconforming with side (15, 19+ ft.) setbacks. (Req.: 50 ft.)

Member Yoars made a motion to approve the Special Permit under zoning bylaw 3.5.5. to allow construction of the addition and the deck and the SFD on a pre-existing nonconforming lot in Residential Zone 3. Stipulation is that on the east return of the deck will not stay more than above 30” above finished grade. Member Rogers seconded the motion. The board voted 5-0 to approve the Special Permit.

RE: Ford Project

Monte and Ingrid Ford
90 Munroe Avenue, **Map 3 Parcel 194**

*On February 20, 2020 at 7:10 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 3 Parcel 194 seeking:

a Special Permit within Zoning Bylaws 3.4.3, or any action related thereto, to allow the construction of an accessory structure – garage/guest apartment prior to five continuous years of owner occupation on a conforming lot located in Residential Zone 2.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Representing the applicant was Woody Mitchell from Squash Meadow. The existing 20133 sq. ft. lot is located in Residential Zone 2 and is conforming. The existing single-family dwelling is conforming with all setbacks (Req.: 25/20/20 feet). The proposed accessory structure – a garage with guest apartment—is conforming with all setbacks. The current owners, having purchased the property in 2017, have not continuously occupied the property for five years.

Woody Mitchell said they were here two years ago. Applicant has owned property now for over two years. The house has been constructed and they are hoping to construct the garage with an apartment above. The garage they’re proposing is 730 sq. ft. Everything is conforming except the five-year requirement. The apartment is for owner’s mother’s caregiver. Chair Rogers asked what the height was. Mr. Mitchell said it’s within the restriction but unsure.

Chair Rogers opened the floor to public comment. Ewell Hopkins, chair of the OB Planning Board said he had questions about logistics and if there was excessive clearing expected. Mr. Mitchell said the lot was cleared under the original construction and building. No more clearing is needed and utilities have already been trenched.

There was no written correspondence. Chair Rogers closed public comment. The board made the following findings and decision:

Member Llewellyn Rogers made the finding that the existing conforming (20133 sf) lot is located in Residential Zone 2.

Member Rogers made the finding that the existing single family dwelling is conforming with all setbacks. (Req.: 25/20/20 feet)

Member Rogers made the finding that the proposed accessory structure –garage with guest apartment is conforming with all setbacks.

Member Rogers made the finding that the current owners, who purchased the property in 2017, have not continuously occupied the property for five years.

Member Rogers proposed a condition that a plan be brought to town hall with the height elevation clearly marked. (It was delivered)

Member Rogers made a motion to accept this proposal under zoning bylaw 3.4.3 to allow the construction of this accessory structure garage apartment prior to five continuous owner-occupied years on a conforming lot. It makes it no more detrimental to the neighborhood. The condition within 24 hours we will get a plan with the height indicated on the plan. Member Holter seconded the motion. The board voted 5-0 to approve the special permit.

RE: Masciotra Project

Richard J. and Ann Masciotra
26 Firehouse Lane, **Map 16 Parcel 191**

*On February 20, 2020 at 7:20 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 16 Parcel 191 seeking:

***a Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,
to allow the construction of a nonconforming accessory structure –
garage/guest apartment on a lot located in Residential Zone 1.***

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Doug Pease and was present. Member Jonathan Holter recused himself. Applicants Richard J. and Ann Masciotra along with Lisa Lucier were also present. The existing 11700 sq. ft. conforming lot is located in Residential Zone 1 (10,000 sq. ft.). The existing single-family dwelling is nonconforming with side and rear setbacks (Req.: 20/20/20). The already existing accessory structure is a garage with guest apartment and is nonconforming with side (4 ft.) and rear (9.3 ft.) setbacks. (Req.: 20 ft.)

In September or October of 1988 applicants purchased property on 26 Firehouse Lane. Garage was present, outline of apartment and a shower was there. Sellers were supposed to give paperwork with sign-offs. There was a 4+1 septic. Everything was signed and they thought it was okay. The bank and appraisers came and signed off. They finished the apartment. Now it seems the only thing missing was approval from the ZBA.

Chair Rogers said the problem is no actual permit was given for the garage guest apartment and so there still is no permit. This is a problem because the board can't make a decision on something that doesn't already have a permit. The previous owner was not supposed to sell the building without getting the permit.

Mr. Masciotra said over 32 years, they've refinanced and done work and bank never said anything. But when they went to sell it now (property sold on January 30, 2020), this is when they discovered lack of permit. He said he has been paying taxes on it for 32 years, and yes – has used it as an apartment over this time period. The first 17 years, his in-laws lived in it and since then, they have rented to the hospital in summer only.

Chair Rogers said there are a lot of questions and does not know that they can make a decision tonight. She opened the floor to public comment.

Testimony in opposition:

John Jones, 22 Firehouse Lane, has concerns about the deck and that the stairs to the garage apartment are only 3 feet from his yard. He would like to request that they move stairs to the other side to preserve his privacy. His house was built before this structure. Applicant said there have been three owners since the Jones purchased in 2006 and it was already existing when they moved in. Jones said they've had problems – a girl was thrown off deck into his yard once.

Sean Spillane, abutter, said if the garage apartment wasn't permitted how can the ZBA allow it to stay. He has concerns about renters and noise and objected to a stockade fence. He said they also have no privacy. The window from garage apartment has a direct line to his bedroom.

Applicant representative Lisa Lucier said the *building* was permitted. Chair Rogers said but the added apartment was not permitted and that even if the garage was there for 30 years, the minute it turned into an apartment it was illegal.

William Peake, abutter lives behind property, was concerned that property might be expanded more and from what he's heard so far, doesn't think it will be.

Sean Spillane asked to speak for Gail Toth – she lives in NJ, this is her summer home. She is concerned too because the staircase looks diagonally over on her deck as well.

Brian Welch, 18 Firehouse Lane, said he's concerned about out-of-control renters because house just beyond them was rented illegally last summer and at one point there was 20 people in that house, all young kids. It was used essentially as a boarding house. His concern is that if this apartment goes through, what will new owner be able to do.

Member Llewellyn Rogers said he recommends going to Board of Selectmen meetings around the boarding house issue. This is a problem in Oak Bluffs but it can be controlled – need to make problem known to them.

Ms. Drakes, an abutter, asked what will happen if this is allowed. Chair Rogers said the board will need to continue this hearing and consult with the town attorney because this is an illegal apartment. She said they also need to speak with the Building Inspector.

Testimony in Support

Correspondence from the Masciotras' daughter Billie Jean Morrison. Chair Rogers read the letter into the record.

Chair Rogers closed the public comment. Board discussion followed about history of the [illegal] apartment. There is a decision on record that denied the accessory structure. Member Yoars said in his nine years on the Board, they've never had a situation like this. He said they have to go back to the Building Inspector because they don't know enough and if he were to vote tonight, he'd vote no.

Mr. Masciotra said they are here because they don't want new owner to have to deal with this.

The board and applicant agreed to continue the hearing to April 23, 2020 at 6:05pm.

RE: Staudt Project

Thomas P. and Susan W. Staudt
239 East Chop Drive, **Map 2 Parcel 1**

*On February 20, 2020 at 7:45 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 2 Parcel 1 seeking:

***a Special Permit within Zoning By-laws 3.5.5, or any action related thereto,
to allow the construction of an addition- a two-story guest apartment
to a an existing garage located on a lot in Residential Zone 2.***

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Email received from George Sourati requesting the hearing be continued to the next meeting date.

The board and applicant agreed to continue the hearing to April 23, 2020 at 6:15 pm.

Meeting adjourned at 7:51 p.m.

*Respectfully Submitted,
Kim Leaird, Clerk/ZBA*

Approved May 21, 2020